

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

SEAN FLYNN, DEAN KARLAN, and
JONATHAN MORDUCH, individually and on
behalf of all others similarly situated,

Plaintiffs,

-against-

MCGRAW HILL LLC, et al.

Defendants.

-----X

LORNA G. SCHOFIELD, District Judge:

21 Civ. 614 (LGS)

ORDER

WHEREAS, on April 30, 2021, the Court issued an Order limiting Phase I fact discovery to discovery as to the named Plaintiffs and class-wide issues (but not as to individual putative class members). Dkt. No. 20. The Court's April 30, 2021, Order did not limit Phase I fact discovery to discovery pertaining to class certification issues.

WHEREAS, pursuant to the Court's April 30, 2021, (Dkt. No. 20) and May 17, 2021, (Dkt. No. 29) Orders, the parties met and conferred to agree on the particulars of Phase I fact discovery.

WHEREAS, on May 20, 2021, the parties jointly filed a letter outlining remaining disputes as to the particulars of Phase I fact discovery. Dkt. No. 38. It is hereby

ORDERED that, in addition to the agreed upon topics referenced in the parties' May 20, 2021, joint letter, the following topics are within the scope of Phase I fact discovery:

- McGraw Hill's development of and rationale for adopting its previous method of calculating author royalties;
- McGraw Hill's development of the Connect Royalty Initiative;
- McGraw Hill's modes and methods for selling Connect Textbooks, including

methods of selling works directly sold on Connect, accessible through Connect, assigned by instructors on Connect, or with a Connect Access Card, Connect Online Access, Connect Inclusive Access, or other Connect Access;

- Documents concerning the marketing or sale of the Connect platform or Connect Course Content as standalone products;
- McGraw Hill's treatment of costs associated with Connect;
- Documents demonstrating the aggregate revenue received from the sale of works included in the Connect Royalty Initiative, and the aggregate royalties paid to authors from 2015 to present;
- Documents describing the scope of McGraw Hill's investment in Connect products as a whole, whether or not they are part of the Connect Royalty Initiative;
- Documents describing the value of the Connect platform and tools, technology, and content other than the works included in Connect products; and
- Organizational charts and documents identifying the persons involved in developing, selling, or determining royalties for Connect products.

These topics are included within the scope of Phase I fact discovery without prejudice to the parties' right to negotiate limitations based on proportionality. It is further

ORDERED that Phase I fact discovery shall not include the following overbroad topic:

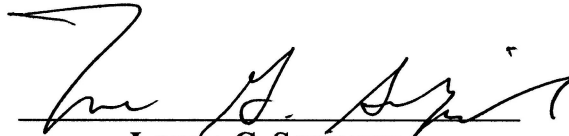
"Any other topics reasonably related to Plaintiffs' individual claims as described in the Amended Complaint." It is further

ORDERED that Defendants shall produce a sample of 100 publishing agreements between McGraw Hill and putative class members that fall within the scope of the royalty

initiative at issue in the Amended Complaint. It is further

ORDERED that by **June 15, 2021**, Defendants shall identify the precise number of contracts at issue and shall disclose that number to Plaintiffs. To the extent the number of contracts materially exceeds 530 agreements, Plaintiffs may seek leave to request additional sample agreements.

Dated: May 25, 2021
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE